



**Harlem Community
Development
Corporation**

M E M O R A N D U M

TO: The Directors

FROM: Rose Jeffrey, Corporate Secretary

DATE: March 13, 2023

RE: **Board of Directors' Meeting – Friday, March 17, 2023**

CC: Carlyne Turner-Beverly

Notice is hereby given to all Directors of the Harlem Community Development Corporation ("Harlem CDC") that a Board of Directors meeting, duly called by the President of the Corporation, will be held on **Friday, March 17, 2023 at 11:00 A.M.** in the offices of the Corporation, located in the Adam Clayton Powell Jr. State Office Building at 163 West 125th Street, 17th Floor, New York, New York.

Audio Only Connectivity Information::

+1 646 931 3860 US
+1 929 205 6099 US (New York)
Meeting ID: 884 1946 4776
Passcode: 814017

The agenda and board materials to be considered at the meeting are attached.



**Harlem Community
Development
Corporation**

BOARD OF DIRECTORS' MEETING

Friday, March 17, 2023

11:00 A.M.

AGENDA

CORPORATE ACTION:

Approval of minutes for the September 16, 2022 Board of Director's Meeting.

FOR CONSIDERATION:

Approval of Harlem CDC's Fiscal Year 2023-24 (April 1, 2023 - March 31, 2024) Operating and Capital Budgets; and Authorization to Take Related Actions

Approval of Harlem CDC's Fiscal Year 2023-24 Weatherization Assistance Program Budget; Authorization to Take Related Actions

Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and to Take Related Actions

Authorization to Amend a Contract for Construction Management Services ("Owners Rep") in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

Authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

FOR INFORMATION:

Victoria Theater Update

ABSW Tax Credit Site Disposition Update

A Presentation - Harlem CDC

ADJOURNMENT

DRAFT- SUBJECT TO REVIEW AND REVISION

Harlem Community Development Corporation
Virtual Meeting of the Board of Directors
163 West 125th Street, 17th Floor
New York, NY 10027

September 16, 2022

Minutes

In Attendance

Directors: Freida Foster, Acting Chair
Holley Drakeford
Eddie Gibbs, Assembly Member
Kristin Richardson Jordan, NYC Council Member

Designees: William Allen for NYS Senator Cordell Cleare
Earnestine Bell-Temple for NYS Assembly Member Al Taylor
Terell Brock for NYS Senator Jose M. Serrano
Deneane Brown for NYS/HCR Commissioner RuthAnne Visnauskas
Margo Cruz for NYS Assembly Member, Daniel O'Donnell
Elsie Encarnacion for NYC Council Member Diana Ayala
Shana Marks for NYS Representative Adriano Espaillat
Lermond Mayes for NYS Assembly Member Inez E. Dickens
Jalissa Quigley for NYC Council Member Shaun Abreu

Harlem CDC

Officers: Curtis L. Archer, President
Rose Jeffrey, Corporate Secretary

Harlem CDC Counsel

& Staff: Richard Dorado, Esq., Senior Counsel, Special Projects, Teleconference
Carlyne Turner-Beverly Esq., Senior Counsel, Teleconference
Destiny Burns, VP/Executive Director
Yma, Oria, Project Manager

Guests: Manny Billiard, Office of Borough President Mark Levine

The September 16, 2022 meeting of the Board of Directors (the “Board” or the “Directors”) of the Harlem Community Development Corporation (“HCDC”, “Harlem CDC” or the “Corporation”) was called to order at 11:27 A.M. by Acting Chair, Freida Foster (“Chair”).

The Chair stated that the Directors have received all relevant written materials in advance of the meeting and are free to ask questions at any time.

The Chair noted that consistent with the policy of the parent corporation, Empire State Development, public comments are welcome on the items on the agenda. After each item is presented and any comments are received from the directors, we will allow members of the public to provide comments. All comments should be limited to two minutes and should only address the item that is under consideration. It was also noted that the public was given the opportunity to comment on the agenda items by submitting their written comments by 10:30 a.m. this morning to hcdcboard@esd.ny.gov. The Chair stated for the record that no comments were received from the public.

Before beginning with the substantive portion of the meeting, the Chair asked for a round-table introduction of the meeting attendees.

The Chair then asked the Directors whether anyone had any potential conflicts of interest with respect to the items on the agenda, to please make the appropriate disclosure for the record at this time.

Hearing none, the Chair stated that the foregoing has been noted for the record.

The Chair then called for a motion on the minutes for the March 18, 2022 Board of Directors’ meeting.

There being no questions or comments, upon motion duly made and seconded, the minutes from the March meeting were adopted.

The Chair then called upon Ms. Turner-Beverly to present the first item on the agenda, a request for authorization for the disposal of property pursuant Article 6 of the New York State Urban Development Act.

Ms. Turner-Beverly presented the request for authorization for disposal of a property located at 1963-1969 Madison Avenue, in which HCDC has an ownership interest. The Board's approval is being solicited to move forward with the disposing of the property to the current operator of the premises, namely the Association of Black Social Workers ("ABSW") Senie Jo Williams, Jr. Housing Development Fund Company Incorporated, for a sum less than fair market value.

The proposed developer and operator is a New York not-for-profit corporation an affiliate of the ABSW. The subject premises is located within the East 125th Street District with frontage on Madison Avenue and along East 126th Street. The premises is improved with four walkup brownstone multi-family buildings, each comprised of four stories plus basement and cellar which were constructed between 1909 and 1920. The site has 20 units, including one basement-level community facility unit, and 19 residential apartment units. Eighteen of the residential apartment units are affordable housing, two bedrooms/one-bathroom apartments, subject to a regulatory agreement administered by the New York City Department of Housing Preservation and Development ("HPD"), and one two-bedroom/one-bathroom superintendents' unit.

Ms. Turner-Beverly further stated that the history of the project site dates back to the late 1980s when one of NYC's first implementations of a federal low-income housing tax credit project, known as the LIHTC project, was sponsored by HCDC's predecessor organization, the Harlem Urban Development Corporation ("HUDC"). The LIHTC projects were authorized under the U.S. Tax Reform Act of 1986, and they involve a dollar-for-dollar tax credit for affordable housing investments. Accordingly, they incentivized the utilization of private equity in the development of affordable housing. The tax credit may be considered more attractive than tax deductions because they provide that dollar-for-dollar reduction in the taxpayer's federal income tax, whereas tax deductions only provide a reduction in the taxable income base. The affordability restrictions associated with LIHTC projects typically expire 15 to 30 years after a project commences. The 1963-1969 Madison Avenue site was one of five sites in Harlem to be selected for renovations via HCDC's LIHTC project.

Ms. Turner-Beverly noted that the other four sites that are part of this LIHTC projects, which are mentioned in the materials are not being presented at this time but are anticipated to be submitted for future consideration.

Ms. Turner-Beverly continued that the 1963-1969 Madison Avenue site was previously owned by the City of New York. In or about 1989, HPD transferred fee title to the land and buildings on the site to HUDC pursuant to the terms of a Land Disposition Agreement, ("LDA"). Under the LDA, HPD provided construction loan financing for the renovation of the building, and HUDC agreed to run a project site and utilize it for low-income housing. The Harlem Urban Development Corporation Tax Credit Incorporated ("HUDCTC") was formed for purposes of financing, conveying,

leasing, operating and managing the project. A general project plan was adopted by the HUDC directors dated November 14, 1989.

Ms. Turner-Beverly further noted that the GPP did not directly anticipate the instances of this type of proposed sale to the current operators of the project site; however, the memorandum of understanding between HUDC and HPD, which was incorporated by reference into the general project plan, explicitly considered that the buildings would be "conveyed to a nonprofit housing development corporation for \$1," at the expiration of the tax credit period. In terms of ownership structure, HUDC, HCDC's predecessor organization, is the fee owner of record for the premises. HUDC's wholly owned subsidiary, HUDCTC Incorporated, entered into a limited partnership to undertake the development of the property. This limited partnership was known as the HUDCTC limited partner. The limited partners in that partnership are American Express, Metropolitan Life, and JP Morgan, as well as HUDCTC.

Ms. Turner-Beverly stated that a ground lease was conveyed to the 1963-1969 Madison Avenue associates limited partnership, which is comprised of the Black Social Workers Services Corporation as the general partner, the HUDCTC limited partnership as a limited partner, and HUDCTC Inc., as a special limited partner.

The current operator of the project site is ABSW Cenie Jo Williams, Jr., Housing Development Fund Company Inc., which is an affiliate of the Association of Black Social Workers.

Ms. Turner-Beverly stated that it should be noted that in terms of the HUDCTC Limited Partnership, all of the institutional investors have indicated that they want to end their participation in this project.

Ms. Turner- Beverly further stated that the ground lease is expected to terminate in 2035 and ownership of the buildings is set to automatically revert to HCDC. The non-profit affiliate, the ABSW has expressed the desire to take over full operation of the project beyond the current terms of the ground lease. The ABSW affiliate has requested that HCDC consider a disposal of the project site for less than fair market value in line with what was originally contemplated in the memorandum of understanding between HUDC and HPD, which considered that the buildings would be conveyed to a "nonprofit housing development corporation for \$ 1" at the expiration of the tax due.

Ms. Turner-Beverly continued that due to the expiration of certain federal and local tax credit benefits, the project site has experienced financial hardship. The financial adversities have required that the current operator explore alternative financing while maintaining its affordable housing objectives. The ABSW has indicated they have been forced to defer some critical repair and maintenance based on cost-prohibitive factors. She said that due to these economic burdens, this site warrants priority attention and the ABSW has asked that HCDC contemplate disposal of the project site for less than fair market value.

Ms. Turner-Beverly explained that the four main components of the proposed disposal are:

1. That HCDC would terminate the current contract;
2. That HCDC would enter into a purchase and sale agreement with the proposed purchaser, which is ABSW Senie J. Williams Jr., Housing Development Fund Company Inc.;
3. The proposed purchaser would enter inter-regulatory agreements with HPD to ensure long-term affordability at the project site; and
4. The proposed purchaser would rehabilitate the site.

Ms. Turner-Beverly also stated that it is anticipated that the proposed project as contemplated would create jobs, would provide a community facility for cultural organizations, and would allow for the rehabilitation of the project site, and preserve the inventory of affordable housing in Harlem.

Ms. Turner-Beverly also noted that, at this time, the proposed cost of disposal is still to be determined and the Board is being asked for authorization to commence negotiations around cost. Board approval would be sought prior to finalizing any disposal transaction associated with cost.

Ms. Turner-Beverly informed the Board that Section 6, Sub 1 of the Urban Development Corporation Act in pertinent part, authorizes HCDC to sell or lease all or any portion of the real or personal property constituting a land use improvement project, whenever the corporation shall find that such sale or lease is in conformity with a plan or undertaken for the clearance, re-planning, reconstruction, or rehabilitation of substandard and insanitary areas in the municipality in which the project is located. Under Section 6, Sub 1, Sub A of the Act, such sale or lease may be made to any housing company without (inaudible) public sale or public notice. It was also noted that under the Public Authorities Law, a public authority is generally required to sell or otherwise transfer a property for not less than fair market value. However, in the event of a proposed transfer for less than fair market value, the public authority is required to make certain disclosures, to the authority board, and to the public with respect to the transaction.

Significantly, the Public Authorities Law requires that prior to the disposal of any property for less than fair market value, the board of an authority is required to consider the information described and "make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer."

Ms. Turner-Beverly concluded that at this time, the directors are requested to:

1. Find, at the disposal of the project site to the proposed purchaser, a housing company as defined by the Urban Development Corporation Act, satisfies the findings required under the Act;
2. Authorize the sale of the project site to the proposed purchaser or an affiliate thereof in accordance with the Act;
3. Make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer in accordance with the Public Authorities Law; and
4. Authorize the taking of actions related to the foregoing.

The Chair inquired if there were any questions related to the presentation and asked the directors to announce themselves for the recorder.

Ms. Encarnacion asked for clarity on the 13 or 30-year affordability that was mentioned and what that would mean for the project.

Ms. Turner-Beverly stated that it would need to be negotiated as part of the new regulatory agreement if the disposal is approved.

Councilmember Richardson Jordan asked what costs are associated with the upgrades needed on the property.

Ms. Turner-Beverly stated that they will provide information regarding the financial status and any violations currently affecting the property.

Ms. Cruz asked which community boards would be affected by the 40 percent.

Ms. Turner-Beverly explained that it would be a part of the negotiations and would be included in the update to the Board.

There being no questions or comments, upon motion duly made and seconded, the following Authorization for Disposal of the Property Pursuant to Article 6 of the New York State Urban

Development Act was adopted. There were two abstentions, Assembly Member Eddie Gibbs and Elsie Encarnacion representing Council Member Diana Ayala.

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization for Disposal of the Property Pursuant to Article 6 of the New York State Urban Development Act; Request for Findings; and Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds that the disposal of the Project Site to the Proposed Purchaser (a housing company as defined by UDCA § 3 [4]) satisfies the findings required under UDC Act Section 6(1); and be it further

RESOLVED, that the Corporation is hereby authorized to enter into negotiations for the sale of the Project Site to the Proposed Purchaser or an affiliate thereof in accordance with UDC Act Section 6(1)(a); and be it further

RESOLVED, that the Directors of the Corporation hereby convey their written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer in accordance with Public Authorities Law Section 2897(7)(c); and be it further

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolution.

Next, The Chair called upon Ms. Destiny Burns to present the request to amend a contract for construction administration services in connection with the Victoria Theater Redevelopment Project.

Ms. Burns stated that she will be presenting a request for HCDC to amend a contract for construction administration services with Kostow Greenwood Architects (“KGA”) in connection with the Victoria Theater Project.

Ms. Burns explained that KGA had been involved with the project from the beginning, initially serving as the Apollo's Construction Management Consultant during the design and planning phase. Their involvement was instrumental in ensuring the quality of the design elements and the acoustics in the performance spaces of the cultural unit. KGA's services continue to be needed to oversee the progress of the project's construction, including the buildout and integration of the cultural unit after the construction is complete.

Ms. Burns further stated that HCDC initially engaged KGA through a discretionary purchase from an MWBE for \$200,000. The contract was then amended three times, and the current contract has a maximum value of \$569,000 and an expiration date that has passed.

Ms. Burns concluded that the Board is being requested to amend the contract, extend the expiration date to July 31, 2023, and increase the overall maximum contract value by 180,000 for a total of \$759,000. The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the agreed-upon rates.

There being no further questions or comments, upon motion duly made and seconded, the following authorizations to amend a contract for construction administration services in connection with the Victoria Theater Redevelopment Project was unanimously adopted.

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the "Materials") a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds KGA to be responsible; and be it further.

RESOLVED, the Corporation is hereby authorized to enter into an amendment to the agreement with KGA to provide Construction Administration Services, to extend the term of the contract to July 31, 2023 and increase the contract value by ONE

HUNDRED FIFTY THOUSAND DOLLARS (\$150,000), for a total amount not to exceed SEVEN HUNDRED FORTY-NINE THOUSAND DOLLARS (\$749,000), on the terms set forth in the Materials with such amendments and modifications as the President, or his designee(s) shall deem necessary and appropriate; and be it further

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolution.

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There being no further business, upon motion duly made and seconded, HCDC's Board of Directors meeting was adjourned at 11.47 A.M.

Respectfully Submitted by,

Rose Jeffrey
Corporate Secretary

Empire State Development
Harlem Community Development Corporation
FY 2023-24 Proposed Operating Budget

	Board Approved Budget FY 2022-23	Proposed Budget FY 2023-24
<u>PERSONAL SERVICES</u>		
Salaries	\$ 651,443	\$ 722,669
Fringe Benefits	273,606	296,294
TOTAL PERSONAL SERVICES	\$ 925,049	\$ 1,018,963
HEADCOUNT	8	8
<u>NON-PERSONAL SERVICES</u>		
Professional Fees		
Legal / Accounting Fees	\$ 62,500	\$ 62,500
Consultant Fees	65,000	65,000
Total Professional Fees	\$ 127,500	\$ 127,500
Other Non-Personal Services		
Employee Travel & Meals	\$ 3,000	\$ 1,000
On-line Services/ Due & Subscriptions	2,000	2,000
Office Occupancy Expenses	11,000	11,000
Insurance	40,500	52,431
Other Outside Services	30,000	10,000
Telephone/Internet	11,500	10,500
Office Supplies and Expense	25,000	18,000
Computers/Software/Equipment	10,000	40,000
Total Other Non Personal Services	\$ 133,000	\$ 144,931
TOTAL NON-PERSONAL SERVICES	\$ 260,500	\$ 272,431
TOTAL OPERATING BUDGET	\$ 1,185,549	\$ 1,291,394

Empire State Development
Harlem Community Development Corporation
FY 2023-24 Proposed Capital Budget

	Board Approved Budget FY 2022-23	Proposed Budget FY 2023-24
Acquisition Costs	\$ -	\$ -
Design & Other Soft Costs	-	-
Legal Costs	250,000	125,000
Property Management/Maintenance Costs	-	300,000
Insurance	-	-
Demolition & Site Clearance	-	-
Construction Costs	2,000,000	2,000,000
Other Misc. Costs	-	-
 TOTAL CAPITAL BUDGET	 <u>\$ 2,250,000</u>	 <u>\$ 2,425,000</u>

Empire State Development
HCDC Weatherization Program
FY 2023-24 Proposed Operating Budget

	Board Approved Budget FY 2022-23	Proposed Budget FY 2023-24
<u>PERSONAL SERVICES</u>		
Salaries	\$ 502,429	\$ 478,890
Fringe Benefits	208,251	196,345
TOTAL PERSONAL SERVICES	<u>\$ 710,680</u>	<u>\$ 675,235</u>
HEADCOUNT	7	7
<u>NON-PERSONAL SERVICES</u>		
Professional Fees		
Legal / Accounting Fees	\$ 15,000	\$ 15,000
Consultant Fees	-	-
Total Professional Fees	<u>\$ 15,000</u>	<u>\$ 15,000</u>
Other Non-Personal Services		
Employee Travel & Meals	\$ 1,000	\$ -
On-line Services/ Due & Subscriptions	900	6,000
Office Occupancy Expenses	-	-
Insurance	40,500	41,402
Other Outside Services	1,278,812	1,072,022
Telephone/Internet	4,500	1,000
Office Supplies and Expense	12,000	20,000
Computers/Software/Equipment	5,000	3,000
Total Other Non Personal Services	<u>\$ 1,342,712</u>	<u>\$ 1,143,424</u>
TOTAL NON-PERSONAL SERVICES	<u>\$ 1,357,712</u>	<u>\$ 1,158,424</u>
TOTAL OPERATING BUDGET	<u><u>\$ 2,068,392</u></u>	<u><u>\$ 1,833,659</u></u>



Harlem Community Development Corporation

FOR CONSIDERATION

March 17, 2023

TO: The Directors

FROM: Curtis Archer

SUBJECT: Victoria Theater Redevelopment – Real Estate Legal Counsel

REQUEST FOR: Harlem Community Development Corporation – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and to Take Related Actions

I. Contract Summary

Contractor:	Phillips Lytle LLP 620 Eighth Avenue, 38 th Floor New York, NY 10018
Scope of Services:	Legal Services
Contract Term:	Expiration date of 3/31/2023
Proposed Term Extension:	Expiration date of 3/31/2024
Contract Amount:	\$505,600
Proposed Amendment Amount:	\$200,000
New Proposed Total Contract Amount:	\$705,600
Funding Source(s):	Imprest account funded by the redevelopment project's private developer.

II. Background

Harlem Community Development Corporation ("Harlem CDC" or the "Corporation") previously engaged Phillips Lytle ("Firm") to perform legal services in connection with the Victoria Theater redevelopment project (the "Project"). The contract had an initial term that began September 9, 2015, with a contract value of \$230,000. Three contract amendments have been authorized as follows: (1) effective September 2016, an increase in contract value not to exceed \$246,000 and

an extension of the expiration date to July 31, 2020; (2) effective June 2020, an increase in contract value not to exceed \$346,000 and an extension of the expiration date to September 30, 2021; and (3) effective July 2021, an increase in contract value not to exceed \$505,600 and an extension of the expiration date to March 31, 2023.

The Firm has provided counsel to Harlem CDC on a variety of issues in connection with the Project, including but not limited to the negotiation and drafting of a Memorandum of Understanding, a development lease agreement and related documents, representation of the Corporation vis-à-vis the designated developer, 233 West 125th Street Danforth, LLC, in connection with construction financing closing proceedings, drafting of lease amendments, and providing ongoing counsel during the construction phase of the project to ensure that the Corporation's interests are adequately represented.

There is a continuing need for legal representation as the Project nears completion, in particular, advising on Harlem CDC's rights under the contract and responding to various claims or requests of the developers that may have impacts on the project schedule and budget. Previous extensions of the scheduled construction completion date have been authorized to accommodate proposed refinancing of the developer's construction loan, and to allow sufficient time to complete Project construction and navigate the governmental administrative processes for obtaining certificates of occupancy for portions of the Project, as well as other factors. The proposed contract term would allow the Firm to assist with any post-transfer issues, including assistance with enforcing any punch list items, etc.

III. Contractor Selection Process

The Corporation has adopted the competitively solicited list of pre-qualified law firms of its parent organization, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), which was approved by ESD's Board of Directors on March 24, 2022. Phillips Lytle LLP appears on the list of pre-qualified counsel.

The Firm has demonstrated the experience and capability to provide advice and counsel for the Project and because of its historical involvement with the Project is uniquely qualified to provide the required counsel in the most cost-effective manner.

Staff proposes that Harlem CDC extend the term of the contract for an additional one-year period, i.e., from March 31, 2023 to March 31, 2024; and that the contract amount of \$505,600 be increased by \$200,000 for a total contract value of \$705,600.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: a) considered the proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

The original contract scope of work included review and drafting of documentation in connection with the development lease execution, the construction financing closing, the enforcement documentation to reflect the Project's affordable housing obligations, the build-out of the cultural space component of the Project, and related contract administration during the construction period. The proposed scope of work remains the same as under the original contract for legal services.

V. Contract Term, Price and Funding

The current contract, as amended, has a contract value of \$505,600 and expires March 31, 2023. It is proposed that the expiration date be extended to March 31, 2024. It is also proposed that the contract amount be increased by \$200,000 to an amount not to exceed \$705,600. The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the lesser of the maximum of ESD's standard rates for outside counsel in effect during the contract term, or the Firm's regular billing rates. Payments will be made from the proceeds of the Imprest account funded by the redevelopment project's designated private developer, 233 West 125th Street Danforth, LLC.

VI. Non-Discrimination/Affirmative Action

Pursuant to New York State Executive Law Articles 15-A and 17-B, Harlem CDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of projects and procurements. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that there exists no potential for MWBE and SDVOB participation. As such, participation goals will not be established or required for this amendment.

VII. Environmental Review

On behalf of Harlem CDC, ESD staff has determined that the requested authorization to amend the Contract, as set forth in these materials, to perform legal services constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the contract amendment.

VIII. Requested Action

The Directors are requested to: (1) make a determination of responsibility with respect to Phillips Lytle LLC, the proposed contractor; (2) authorize the Corporation's officers to enter into an amendment to the agreement with Phillips Lytle LLP and to execute such other actions as are necessary to enter into and perform the agreement.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachments

Resolution



Harlem Community Development Corporation

March 17, 2023

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLC and to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Phillips Lytle LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an amendment to the agreement with Phillips Lytle LLP to extend the term of the contract to March 31, 2024 and to increase the contract value by TWO HUNDRED THOUSAND dollars (\$200,000) for a total amount not to exceed SEVEN HUNDRED FIVE THOUSAND SIX HUNDRED dollars (\$705,600), on the terms and conditions set forth in the Materials with such amendments and modifications as the President of the Corporation, or his or her designee(s) shall deem necessary and appropriate; and be it further

RESOLVED, that the President of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolution.

* * *



FOR CONSIDERATION

March 17, 2023

TO: The Directors

FROM: Curtis L. Archer

SUBJECT: Victoria Theater Redevelopment Project – Construction Management Services

REQUEST: HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Management Services (“Owners Rep”) in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

I. Contract Summary

Consultant: A1 Works in Progress Associates (“WPA”)

Scope of Services: To represent Harlem Community Development Corporation’s interest as owner during the construction phase of Victoria Theater Redevelopment Project, including the buildout of the Cultural Unit and development of signage program

Contract Term: Expiration date 5/31/2023

Proposed Term
Extension: Expiration date 3/31/2024

Contract Amount: Not to Exceed \$752,711, inclusive of a 10% contingency

Proposed Amendment
Amount: \$233,549

New proposed Total
Contract Amount: Not to Exceed \$986,260, inclusive of a 10% contingency from prior contract amendment

Funding Source: Rent revenue from the Victoria Theater development lease

II. Background

The Victoria Theater, located at 235-237 West 125th Street is owned by HCDC and has been vacant since 1997. Harlem Community Development Corporation (“HCDC”, “Owner”) and its parent corporation, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), in 2012 adopted a General Project Plan (“GPP”) and in 2013 affirmed a Modified General Project Plan (“MGPP”) for the Victoria Theater Redevelopment Project.

Victoria Theater Redevelopment Project (“Victoria Project”) will transform the long-vacant Victoria Theater into a 385,000-square foot and 27-story mixed-use development. The Victoria Project consists of a full-service hotel with approximately 200 keys; approximately 200 affordable and market-rate residential rental apartments; 25,000 square feet of retail space; and 25,000 square feet of Cultural Arts Space (“Cultural Unit”). The Victoria Project will be operated as a condominium with HCDC as the owner of the Cultural Unit condominium and the developer of the Victoria Project or related entities or designees as the initial owners of the remaining condominium units in the Victoria Project.

233 West 125th Street Danforth LLC (“Danforth”) pursuant to a development lease between Danforth and HCDC (“Development Lease”), is obligated to construct the Victoria Project, including the buildout of the core and shell of the Cultural Unit. The Development Lease also obligates Danforth to direct its architect to incorporate within the architectural plans and specifications for the Victoria Project, specific design requirements for the Cultural Unit, including but not limited to sound attenuation for the floors and ceiling, that shall be fully built out and in accordance with the plans and specifications of the Development Lease and the Cultural Unit design schematics. The Developer has retained Flintlock Construction Services LLC (“Flintlock” or “Contractor”) for construction services and Aufgang Architects (“Aufgang”) for architectural services.

In June 2015, the HCDC Directors conditionally designated Apollo Theater Foundation, Inc. (“Apollo” or “Tenant”) as the operator and manager of the Cultural Unit at the Victoria Project. The HCDC Directors further authorized HCDC to enter into negotiations with Apollo over the terms of a lease and operating agreement to operate and manage the Cultural Unit.

III. Scope of Work

The Owner’s Rep represents HCDC’s interest as owner during the construction phase of the Victoria Project, including the buildout of the Cultural Unit. Initially, HCDC’s goal in retaining an Owner’s Rep was to oversee the construction of the Cultural Unit Project and manage the schedule, cost, quality and coordination of its buildout within the overall construction of the Victoria Project. Additional scope of work will include managing the signage demands of the Cultural Unit, hotel, and retail components of the project and work with their representatives to create a cooperative signage sharing plan for the marquee and other public facing digital signage.

The Owner's Rep's responsibilities primarily consist of the following: 1) management of all aspects of the project including construction costs, all contracts, material as well as compliance with workforce requirements; 2) maintaining Cultural Unit project records and overseeing and managing commissioning and close-out 3) evaluating design and construction documents and change orders, 4) advising Owner on the selection of materials, building systems and equipment, methods of project delivery, feasibility of construction, estimates of construction costs, including, potential cost overrun savings and maximization of value; 5) attending meetings with contractors and at the Owner's request, meeting and consulting with Tenant to review design plans and specifications related to the Cultural Unit Project and ensure compliance with Cultural Unit design schematics; and 6) meeting with representatives of all commercial tenants to develop and manage signage screen sharing program for the marquee and other public facing digital signs.

IV. Contractor Selection Process

Five firms from ESD's Pre-Qualified List of Owner's Representatives were invited on March 27, 2018 to submit proposals for construction management services. The five firms were selected based upon the firms' general skills, experience and abilities. On April 18, ESD received proposals from all five firms.

All proposals were evaluated by representatives from HCDC, Empire State Development ("ESD") and Apollo, based on the selection criteria provided with the mini-solicitation:

1. Qualifications and Experience of Staff (20 points)
2. Quality and Relevance of Past Experience (25 points)
3. Proposed Project Plan (30 points)
4. Fee Proposal (20 points)
5. Quantitative Factor (Diversity) (5 points)

All proposals were evaluated, three were selected for telephone interviews and the firm with the highest score was selected.

V. Contract Term, Price and Funding

In March of 2022 the Directors authorized HCDC to amend its contract with WPA for owners rep services to extend the expiration date to May 2023 and for a total contract value not to exceed \$752,711 inclusive of a 10% contingency. It is proposed that the contract be amended to extend the expiration date to March 31, 2024 for value not to exceed \$986,260 due to construction delays on the Victoria Theater project extending the completion date and expanded scope of work to include signage consulting.

The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the agreed upon rates. Payments will be made from the rent revenue from the Victoria Theater Lease.

VI. Responsible Parties

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policy related thereto, staff has (a) considered the ability of WPA to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds WPA to be responsible.

VII. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. WPA will be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women owned Business Enterprise (MWBE) and Service Disabled Veteran-owned Businesses for any contractual opportunities generated, and to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR§ 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and SDVOB Participation Goal of 3%.

VIII. Environmental Review

ESD staff has determined that the requested authorization to amend a contract for construction management services constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IX. Requested Actions

The Directors are requested to: (1) make a determination of responsibility with respect to WPA; and (2) authorize the Corporation to Amend its contract with WPA for an amount not to exceed \$986,260 (inclusive of a 10% contingency from prior amendment) and authorization to Take Related Actions.

X. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

XI. Attachments

Resolution



March 17, 2023

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Management Services (“Owners Rep”) in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the “Materials”) a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds WPA to be responsible; and be it further.

RESOLVED, the Corporation is hereby authorized to Amend a contract in accordance with the Materials with WPA to provide Construction Management Services, to extend the term of the contract to March 31, 2024 and increase the contract value by TWO HUNDRED-THIRTY-THREE THOUSAND FIVE HUNDRED FORTY-NINE (\$233,549), for a total not to exceed NINE HUNDRED EIGHTY-SIX THOUSAND TWO HUNDRED SIXTY DOLLARS (\$986,260); and be it further.

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

* * *

FOR CONSIDERATION

March 17, 2023

TO: The Directors

FROM: Curtis L. Archer

SUBJECT: Victoria Theater Redevelopment Project – Construction Administration Services

REQUEST: HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

I. Contract Summary

Consultant: Kostow Greenwood Architects (“KGA”)
594 Broadway Ste. 300
New York, NY 10012

Scope of Services: To provide construction administration services for the remainder of the Victoria Theater Redevelopment Project, specifically the buildout of the Cultural Unit.

Contract Term: Expiration date 7/31/2023

Proposed Term
Extension: Expiration date of 3/31/2024

Contract Amount: Not to Exceed \$749,000

Proposed Amendment
Amount: \$100,000

New Proposed Total
Contract Amount: Not to exceed \$849,000

Funding Source: Rent revenue from the Victoria Theater development lease

II. Background

The Victoria Theater, located at 235-237 West 125th Street is owned by HCDC and has been vacant since 1997. Harlem Community Development Corporation (“HCDC”, “Owner”) and its parent corporation, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), in 2012 adopted a General Project Plan (“GPP”) and in 2013 affirmed a Modified General Project Plan (“MGPP”) for the Victoria Theater Redevelopment Project.

Victoria Theater Redevelopment Project (“Victoria Project”), once completed, will transform the long-vacant Victoria Theater into a 385,000-square foot and 27-story mixed-use development. The Victoria Project consists of a full-service hotel with approximately 200 keys; approximately 200 affordable and market-rate residential rental apartments; 25,000 square feet of retail space; and 25,000 square feet of Cultural Arts Space (“Cultural Unit”). The Victoria Project will be operated as a condominium with HCDC as the owner of the Cultural Unit condominium and the developer of the Victoria Project or related entities or designees as the initial owners of the remaining condominium units in the Victoria Project.

233 West 125th Street Danforth LLC (“Danforth”) pursuant to a development lease between Danforth and HCDC (“Development Lease”), is obligated to construct the Victoria Project, including the buildout of the core and shell of the Cultural Unit. The Development Lease also obligates Danforth to direct its architect to incorporate within the architectural plans and specifications for the Victoria Project, specific design requirements for the Cultural Unit, including but not limited to sound attenuation for the floors and ceiling, that shall be fully built out and in accordance with the plans and specifications of the Development Lease and the Cultural Unit design schematics. The Developer has retained Flintlock Construction Services LLC (“Flintlock” or “Contractor”) for construction services and Aufgang Architects (“Aufgang”) for architectural services.

In June 2015, the HCDC Directors conditionally designated Apollo Theater Foundation, Inc. (“Apollo” or “Tenant”) as the operator and manager of the Cultural Unit at the Victoria Project. HCDC and Apollo retained Kostow Greenwood Architects to perform construction management services during the design, planning, buildout of the cultural unit and its integration within the Victoria Theater project.

III. Scope of Work

KGA will oversee the progress on behalf of HCDC during the construction phase of the Victoria Project, including the buildout of the Cultural Unit. KGA’s responsibilities will primarily consist of the following: 1) attending regularly scheduled site-visits to observe the work in progress, 2) responding to request for information, coordinate with Architect of Record and the base building development team, 3) reviewing design and construction documents and change orders, 4) attending meetings with contractors and at HCDC’s request, meeting and consulting with the

Owner's Rep to review design plans and specifications related to the Cultural Unit Project and ensure compliance with Cultural Unit design schematics.

IV. Contractor Selection Process

Following a competitive interview process conducted by Apollo Theater Foundation, the Conditionally Designated Operator/Manager of the Victoria Theater Cultural Unit, Kostow Greenwood Architects, a New York State Certified Woman-owned Business Enterprise was selected to provide architectural planning and design services for the Cultural Unit. KGA was selected for their extensive experience planning and designing theater and performing arts facilities and their understanding of the unique and complex challenges of creating a new venue within the structure of a proposed development.

KGA's participation in the design and planning phase of the project was instrumental in ensuring the quality of the design elements for optimal use and acoustics of the Cultural Unit. A Discretionary Purchase from a Minority and Woman-owned Business Enterprise ("MWBE") was requested for required construction administration phase services due to KGA's expertise and experience with the Project. Staff is confident their continued service will ensure the Cultural Space is constructed optimally for uses outlined in the General Project Plan.

HCDC is seeking to enter this amendment via a single-source procurement process; staff is confident the selection would minimize delays while ensuring the Project is constructed for uses outlined in the General Project Plan.

V. Contract Term, Price and Funding

HCDC's initial engagement with KGA was for a Discretionary Purchase from an MWBE of \$200,000. The contract was amended four times. The current contract has a maximum value of \$749,000. It is proposed that the current contract be amended to increase the maximum value to \$849,000 and extend the expiration date to March 31, 2024

The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the agreed upon rates. Payments will be made from rent revenue from the Victoria Theater lease.

VI. Responsible Parties

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policy related thereto, staff has (a) considered the ability of KGA to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers

maintained by the New York State Office of General Services. Based on the foregoing, staff finds KGA to be responsible.

VII. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Organization shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprises (MWBEs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of ESD's funding.

Kostow Greenwood Architects ("KGA") is a Women-Owned Business Enterprise/Minority-Owned Business Enterprise certified by the State of New York and may utilize its certification to satisfy the above requirement.

VIII. Environmental Review

ESD staff, on behalf of HCDC has determined that the requested authorization to amend a contract for construction administration services constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IX. Requested Actions

The Directors are requested to: (1) make a determination of responsibility with respect to KGA; and (2) authorize the Corporation to enter into an amendment to the agreement with KGA to extend the contract term (3) to execute such or other actions as are necessary to enter into and perform the agreement.

X. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

XI. Attachments

Resolution



March 17, 2023

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the “Materials”) a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds KGA to be responsible; and be it further.

RESOLVED, the Corporation is hereby authorized to enter into an amendment to the agreement with KGA to provide Construction Administration Services, to extend the term of the contract to March 31, 2024 and increase the contract value by ONE HUNDRED THOUSAND DOLLARS (\$100,000), for a total amount not to exceed EIGHT HUNDRED FORTY-NINE THOUSAND DOLLARS (\$849,000), on the terms set forth in the Materials with such amendments and modifications as the President, or his designee(s) shall deem necessary and appropriate; and be it further

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolution.

* * *